



DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Docket No. FTA-2013-0023

Formula Grants for Rural Areas: Guidance and Application Instructions

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Availability of Proposed Circular and Request for Comments.

SUMMARY: The Federal Transit Administration (FTA) has placed in the docket and on its website, proposed guidance in the form of a circular, to assist recipients in their implementation of the section 5311 Rural Area Formula Program. The purpose of this proposed circular is to provide recipients of FTA financial assistance with updated instructions and guidance on program administration and the grant application process. The proposed revisions to the existing circular are a result of changes made to the Rural Area Formula Program by the Moving Ahead for Progress in the 21st Century Act (MAP-21). By this notice, FTA invites public comment on the proposed circular.

DATES: Comments must be submitted by [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Please submit your comments by only one of the following methods, identifying your submission by docket number FTA- 2013-0023. All electronic submissions must be made to the U.S. Government electronic site at <http://www.regulations.gov>.

- 1) Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.

- 2) Mail: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- 3) Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.
- 4) Fax: 202-493-2251.

Instructions: You must include the agency name (Federal Transit Administration) and Docket number (FTA-2013-0026) for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA received your comments, include a self-addressed stamped postcard. All comments received will be posted without change to www.regulations.gov including any personal information provided and will be available to internet users. You may review DOT's complete Privacy Act Statement published in the Federal Register on April 11, 2000 (65 FR 19477) or <http://DocketsInfo.dot.gov>.

Docket: For access to the docket to read background documents and comments received, go to www.regulations.gov at any time or to the U.S. Department of Transportation, 1200 New Jersey Ave SE, Docket Operations, M-30, West Building Ground Floor, Room W12-140, Washington, DC 20590 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For program questions, Lorna Wilson, Office of Transit Programs, Federal Transit Administration, 1200 New Jersey Ave. SE, Room E46-305, Washington, D.C., 20590, phone: 202-366-0893 or e-mail:

Lorna.Wilson@dot.gov. For legal questions, Bonnie Graves, Office of Chief Counsel, same address, room E56-306, phone: 202-366-4011, or e-mail: Bonnie.Graves@dot.gov.

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I. Overview

This notice provides a summary of proposed changes to FTA Circular 9040.1F, “Non-urbanized Area Formula Program Guidance and Grant Application Instructions.”

The Moving Ahead for Progress in the 21st Century Act (MAP-21, Pub. L. 112-141),

signed into law on July 6, 2012, renamed the Section 5311 program as the Formula Grants for Rural Areas Program. Generally the Section 5311 program provides formula funding to States and Indian Tribes for the purpose of supporting public transportation in areas with a population of less than 50,000. Funding may be used for capital and planning projects, job access reverse commute projects, operating assistance and administration expenses. FTA is updating the existing circular, 9040.1F, published on April 1, 2007, to reflect changes in the law.

Because MAP-21 amended the name of the section 5311 program from the Formula Grants for Other Than Urbanized Area Program to the Formula Grants for Rural Areas Program, the word “rural” replaces “non-urbanized area” or “other than urbanized area” throughout the proposed circular. Under MAP-21, the changes to this program include changes to the formula, eligible activities, and to the set-asides that support other rural transit programs within this section, such as the Tribal Transit Program. These changes are described below.

MAP-21 made several significant changes to Federal transit law that are applicable across all of FTA’s financial assistance programs and reflected in the proposed circular. These changes further several important goals of FTA and the U.S. Department of Transportation (DOT). Most notably, MAP-21 grants FTA significant new authority to oversee and regulate the safety of public transportation systems throughout the United States. MAP-21 also puts new emphasis on restoring and replacing the Nation’s aging public transportation infrastructure by establishing a new State of Good Repair Formula Program and new asset management requirements, and aligning Federal funding with key performance goals and tracking recipients’ progress towards these goals. Finally, MAP-

21 improves the efficiency of program administration through program consolidation and streamlining.

In addition to MAP-21 updates addressed above and outlined below, the proposed circular updates the organization and wording of the existing circular to improve clarity and to achieve consistency with FTA's other circulars and to reflect other changes made by MAP-21, specifically to the 5311 program. When adopted, the final circular will supersede the existing circular.

This document does not include the proposed circular on which FTA seeks comment; however, an electronic version is available on FTA's website, at www.fta.dot.gov. Paper copies may be obtained by contacting FTA's Administrative Services Help Desk, at (202) 366-4865.

II. Chapter-by-Chapter Analysis

A. Chapter I – Introduction and Background

Chapter I of the circular is an introductory chapter that covers general information about FTA, provides a brief history of the 5311 program, and defines terms applicable across all FTA programs.

The proposed circular updates the definitions section to include changes and additions made by MAP-21. The following statutory definitions were amended or added by MAP-21, and are included in the proposed circular: associated transit improvements (previously "transit enhancements"); bus rapid transit (BRT) system; commuter highway vehicle or vanpool vehicle; disability; fixed guideway; job access and reverse commute project; private provider of public transportation by vanpool; public transportation; regional transportation planning organization; and senior. Non-statutory definitions for

terms that are unclear or currently undefined have also been added to this section. Where applicable, we have used the same definitions found in rulemakings or other circulars to ensure consistency. We have also added a definition for “electronic grant management system” and removed references to the current system – TEAM – in anticipation of a new system, currently under development.

FTA proposes revising the program history section to incorporate a summary of changes made by MAP-21. FTA seeks comment on the content of Chapter I.

B. Chapter II – Program Overview

Chapter II provides an overview of the Section 5311 program. Proposed changes to this chapter reflect changes in the law.

The chapter begins with a summary of the statutory authority for Section 5311, and includes a discussion of new and redefined activities for this program, including takedowns for the new Appalachian Development Public Transportation Assistance Program, the Rural Transit Assistance Program, and the revised Tribal Transit Program which includes both formula and discretionary funding; planning; and job access and reverse commute projects. This section also describes the new formula factors by which Section 5311 funds are apportioned.

FTA proposes updating the program goals section, by adding three additional goals of the program: providing financial assistance to help carry out national goals related to mobility for all, including seniors, individuals with disabilities, and low-income individuals; increasing availability of transportation options through investments in intercity bus services; and encouraging mobility management, employment-related transportation alternatives, joint development practices, and transit-oriented development.

FTA proposes amending the section on the relationship to other FTA programs to include a brief discussion of programs repealed by MAP-21 but for which funding may still be available. These programs include: Clean Fuels Grant Program (former section 5308); Bus and Bus Facilities Discretionary Program (former section 5309(b)(3)); Job Access and Reverse Commute Program (former section 5316); New Freedom Program (former section 5317); and Paul S. Sarbanes Transit in the Parks Program (former section 5320). Funds previously authorized for programs repealed by MAP-21 remain available for their originally authorized purposes until the period of availability expires, the funds are fully expended, the funds are rescinded by Congress, or the funds are otherwise reallocated.

Also included in this section is a brief discussion of the relationship between the Section 5311 Program and other programs that are either new or were significantly modified by MAP-21, including: Urbanized Area Formula Program (section 5307); State of Good Repair Formula Program (section 5337); Bus and Bus Facilities Formula Program (section 5339); Transit Oriented Development Pilot Program (section 20005(b) of MAP-21); Transportation Alternatives Program (23 U.S.C. 213(b)); Federal Lands Access Program (23 U.S.C. 204); and Federal Highway Administration (FHWA) flexible funds. FTA seeks comment on the content of Chapter II.

C. Chapter III – General Program Information

This chapter provides general information about the 5311 program. This chapter specifically discusses apportionments under the program, eligible uses of program funds, and matching requirements.

As stated previously, Congress amended the formula by which Section 5311 program funds are apportioned. Under previous authority, 80 percent of funds were allocated to States on the basis of rural area population, and the remaining 20 percent of funds were allocated on the basis of the land area within the rural area. Under MAP-21, 83.15 percent of available funds are apportioned on the basis of these two factors, while 16.85 percent of funds are apportioned on the basis of land area, vehicle revenue miles and the number of low-income individuals in rural areas. Vehicle revenue miles are a new formula factor and the low-income individuals factor reflects that job access and reverse commute projects are now eligible activities under the Section 5311 program.

In addition to funds made available to States under Section 5311, funds authorized for the Section 5340 growing States formula will be apportioned to States for use in rural areas.

Funding for oversight, the Rural Transportation Assistance Program (RTAP), Tribal Transit Program, and the new Appalachian Development Public Transportation Assistance Program will be taken off the total amount available to carry out the Section 5311 Program in each fiscal year before amounts are apportioned to the States.

FTA proposes clarifying the provisions related to transferring funds between programs. We propose maintaining the transfer provision language for transfer of Section 5316 (Job Access and Reverse Commute) and Section 5317 (New Freedom), since many areas continue to have FY 12 and earlier funds available for obligation and expenditure. Funds made available for the Appalachian Development Public Transportation Assistance Program may be transferred to FHWA if a State provides documentation to the FTA regional office that includes: a description of the notice and

comment process used to establish stakeholder involvement (i.e. State, local transit operators, and local MPO), a statement that the funds cannot be used for operating expenses, and a certification that the local transit needs are being addressed.

FTA proposes making only clarifying edits to the section on Eligibility. We propose several changes to the section on Eligible Activities. MAP-21 reduced the amount of administrative funds available to the State, from 15 percent to 10 percent, but added planning activities as an eligible expense. Administrative funds may be used for to administer the program and provide technical assistance to subrecipients, including project planning, program and management development, public transportation coordination activities, and research the State considers appropriate to promote effective delivery of public transportation to rural areas. In addition, States may use up to 0.5 percent of the Section 5311 apportionment to pay for 80 percent of the costs of safety certification training for employees directly responsible for safety oversight.

As stated previously, planning is a new eligible expense under MAP-21. The planning activities undertaken with Section 5311 funds are in addition to those awarded to the State under Section 5305 and must be used specifically for rural area needs.

The Job Access and Reverse Commute (JARC) Program, (former Section 5316), was repealed by MAP-21; however, job access and reverse commute projects are now eligible under the Section 5311 program. A job access reverse commute project is a “transportation project to finance planning, capital, and operating costs that support the development and maintenance of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and activities related to their employment, including transportation projects that facilitate the provision of public

transportation services from urbanized areas and rural areas to suburban employment locations.” 49 U.S.C. 5302(9).

Each potential project must be for the “development” or “maintenance” of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and employment-related activities. FTA defines “development of transportation services” to mean new projects that were not in service on October 1, 2012. New job access and reverse commute projects may include the expansion or extension of an existing service, so long as the new service is designed to support the target populations; such projects are not required to be solely for the use of the target populations. “Maintenance of transportation services” means projects that continue and maintain job access or reverse commute projects that received funding under the former JARC (Section 5316) program. Projects funded under the former Section 5316 program must be eligible under Section 5311 in order to continue to receive funding. On April 22, 2013, FTA published the proposed circular for the Urbanized Area Formula program for notice and comment. In that circular, FTA proposed to amend the list of eligible job access and reverse commute projects under the section 5307 program. The comment period on that circular has closed, and FTA is in the process of reviewing comments and developing a final circular. Because the circular for the Section 5307 program is not yet final, and job access and reverse commute projects are in both the Sections 5307 and 5311, FTA is proposing the same list of eligible job access and reverse commute projects in this circular for the Rural Areas program. Comments are welcome in response to this publication; however, duplicate comment submissions are not necessary as the comments received in response to the earlier circular will be

considered when establishing the final list of eligible job access and reverse commute projects under both the Section 5307 and Section 5311 programs.

Although job access and reverse commute projects under Section 5311 are not required to be developed through a coordinated planning process, the project must be identified by the metropolitan planning organization (MPO) and the designated recipient as a job access and reverse commute project in the designated recipient's annual program of projects, which must be developed in consultation with interested parties, published with the opportunity for comments, and is subject to a public hearing.

The unobligated carryover balances of FY 2012 and older JARC program funds may be obligated through the period of availability, but must follow the SAFETEA-LU requirements. For example, Section 5316 JARC projects must be derived from a locally developed, coordinated public transit-human services transportation plan and must also be selected by the designated recipient through an area-wide or statewide competitive selection process. Although not required by law, FTA encourages recipients to continue to use the coordinated planning process to identify and develop job access and reverse commute projects for funding under Section 5311, as amended by MAP-21.

The Federal share of capital and planning projects is 80 percent, and the Federal share for operating projects is 50 percent. Prior to MAP-21, vehicle-related equipment to comply with the Americans with Disabilities Act (ADA) or the Clean Air Act (CAA) was funded at 90 percent. FTA administratively "blended" the 80 percent Federal share for revenue vehicles with the 90 percent share for equipment to reach an 83 percent Federal share for revenue vehicles that were compliant with the ADA or the CAA. Under MAP-21, the Federal share is now 85 percent for these vehicles. In addition, the 90 percent

Federal share for vehicle-related equipment and facilities acquired for purposes of complying or maintaining compliance with the CAA or required by the ADA continues.

MAP-21 codified the “Intercity Pilot Match Program” established by FTA in March 2007, which permits the cost of an unsubsidized portion of privately provided intercity bus service that connects feeder service to be used as in-kind local match for the intercity bus projects. For the costs to be eligible for a recipient's local share, the recipient and the provider must have entered into a legally binding agreement requiring the provider to use the rolling stock in the recipient's service area. FTA seeks comment on the content of Chapter III.

D. Chapter IV – Program Development

Generally, FTA has made only clarifying edits to this chapter. There are two areas of significant change from C 9040.1F: The addition of information on the new performance based planning approach under MAP-21, and revisions to the program of projects section.

MAP-21’s new broad performance management program supports seven national performance goals as well as the general purposes of Federal transit law described in 49 U.S.C. 5301. The performance management framework attempts to improve project decision-making through performance-based planning and programming and through fostering a transparent and accountable decision-making process for MPOs, States, and providers of public transportation. States may establish or designate regional transportation planning organizations to carry out the statewide planning process, with an emphasis on addressing the rural needs of nonmetropolitan areas of the State. If a State elects not to establish or designate a regional transportation planning organization, the

State must consult with affected nonmetropolitan local officials to determine projects that may be of regional significance.

As for the program of projects, FTA proposes to eliminate Category C, which was typically used for program reserve. Given that Section 5311 funds are available for obligation for a total of three years, if the State does not have a project identified that fits in either Category A or B, FTA recommends the funds remain unobligated until future needs arise. Second, FTA proposes updating the “revisions to the program of projects section” to provide flexibility to States to make minor revisions without having to necessarily obtain FTA’s prior approval. FTA seeks comment on the content of Chapter IV.

E. Chapter V – Program Management and Administrative Requirements

Many of the proposed amendments to this chapter are clarifying in nature. Areas of substantive edits include an increase in the threshold for small purchases to \$150,000 (up from \$100,000) and inclusion of the statutory change that permits multiyear rolling stock contracts for which the recipient has an option to buy additional rolling stock or replacement parts to be up to 5 years for bus procurements and up to 7 years for rail procurements, provided the option does not allow for significant changes or alterations to the rolling stock.

For consistency across circulars, we propose adding a paragraph on the transit vehicle manufacturer disadvantaged business enterprises program. This paragraph contains the same information as the proposed urbanized area formula program circular, 9030.1E. We also propose adding a paragraph each on the FTA electronic grant management system, the system for award management (SAM) requirements, and DUNS

registration requirements. We have also added a paragraph describing the Federal Funding Accountability and Transparency Act (FFATA) requirement that each recipient report information about each first tier sub-award over \$25,000 by the end of the month following the month the direct recipient makes any sub-award or obligation. FTA seeks comment on the content of Chapter V.

F. Chapter VI – State Management Plan

Chapter VI addresses the State Management Plan, a document describing state policies and procedures for administering state-managed portions of the Section 5311 program. There are two substantive changes to this chapter. First, under intercity bus transportation, we state that if the in-kind provision is used for local match, the State must document the process used to validate the source of the in-kind match, and the unsubsidized segment of the intercity bus service. Second, and consistent with changes to Section 5310, formula grants for the enhanced mobility of seniors and individuals with disabilities, effective with FY 2013, Section 5310 funds may not be transferred to Section 5311. FTA seeks comment on the content of Chapter VI.

G. Chapter VII – Appalachian Development Public Transportation Assistance Program

FTA proposes a new chapter in this circular: Appalachian Development Public Transportation Assistance Program (ADTAP). Under MAP-21, this new formula program is funded as a takedown from funds made available for the Section 5311 program, with \$20 million available for projects in the Appalachian Region.

Funds for this program are available to support public transportation service in West Virginia and eligible counties in 12 other States: Alabama, Georgia, Kentucky,

Maryland, Mississippi, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, and Virginia. Funds are available for grants for any purpose eligible under Section 5311, which includes capital, operating, planning, job access and reverse commute projects, and administrative assistance for the Appalachian Region.

The formula for this program is based on guidelines established under section 9.5(b) of the Appalachian Regional Commission Code. Funds that cannot be used for public transportation operating expenses may be transferred and used for a highway project if the Governor approves the use in writing after appropriate notice and an opportunity for comment and appeal are provided to affected public transportation providers. FTA seeks comment on the content of Chapter VII.

H. Chapter VIII – Intercity Bus

MAP-21 continues the requirement that each State spend no less than 15 percent of its annual Rural Area Formula apportionment for the development and support of intercity bus transportation, unless it can certify, after consultation with affected intercity bus service providers, that the intercity bus service needs of the State are being adequately met. FTA continues to encourage consultation with other stakeholders, such as communities affected by loss of intercity service.

MAP-21 codifies the “Intercity Pilot Match Program” established by FTA in March 2007, which permits the cost of an unsubsidized portion of privately provided intercity bus service that connects feeder service to be used as in-kind local match for the intercity bus projects. We have included the in-kind match language in this chapter.

The section on the Over-the-Road Bus Accessibility Incentive Program is deleted to reflect the repeal of the program by MAP-21. FTA proposes updating the ADA

regulations section of this chapter to reflect that as of October 1, 2012, 100 percent of over-the-road buses that provide fixed route service must be accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. FTA seeks comment on the content of Chapter VIII.

I. Chapter IX – Rural Transportation Assistance Program (RTAP)

The RTAP program continues to provide funding to assist in the design and implementation of training and technical assistance projects, research, and other support services tailored to meet the needs of transit operators in rural areas. FTA does not propose any substantive changes to this chapter. FTA seeks comment on the content of Chapter IX.

J. Chapter X – Public Transportation on Indian Reservations

Another proposed new chapter in this circular is Chapter X, Public Transportation on Indian Reservations. Under MAP-21, the Tribal Transit Program has been expanded, and now totals \$30 million annually, of which \$25 million is for a formula program and \$5 million is for a discretionary program.

The formula program is funded as a takedown from funds made available for the Section 5311 program. The formula factors include annual vehicle revenue miles and the number of low-income individuals residing on tribal lands. Eligible direct recipients for both the formula and discretionary programs are Federally-recognized Indian tribes. The funds are to be allocated for grants to Indian tribes for any purpose eligible under Section 5311, which includes capital, operating, planning, job access and reverse commute projects, and administrative assistance for rural public transit services and rural intercity bus service.

Section 5311(c)(1) provides that the Secretary shall establish the terms and conditions for the Tribal Transit Program. When Indian tribes receive funds under a State's Section 5311 program funds, all Federal requirements attach. When Indian tribes receive Tribal Transit funds, they must comply with certain cross-cutting requirements as listed in section 7 of this chapter.

FTA proposes that no local match is required for the formula program, or for planning grants made under the discretionary program. We propose a 10 percent local match requirement for discretionary grants made for both capital and operating expenses.

In order to be eligible for Tribal Transit funds, Indian tribes must report to the National Transit Database. Information regarding this reporting requirement is in section 13 of this chapter. FTA seeks comment on the content of Chapter X.

K. Chapter XI – Other Provisions

Chapter XI provides summaries of FTA-specific and other Federal requirements with which Section 5311 recipients must comply. FTA proposes a number of changes to this chapter consistent with changes in the law. Section 5323(b), as amended by SAFETEA-LU, Notice and Public Hearing, was repealed by MAP-21, and FTA has removed discussion of this section from the proposed circular. This section applied to capital projects that would substantially affect a community. FTA notes that while Section 5323 was repealed, there are other requirements for public notice and comment and opportunities for a hearing as part of the environmental review process and various planning processes. We propose streamlining the Environmental Review section, we have added a section on Environmental Justice, we have amended the section on Safety

and Security, and we have made clarifying edits to a number of sections. FTA seeks comment on the content of Chapter XI.

L. Appendices

The proposed appendices are intended as tools to assist recipients in submitting grant applications.

Appendix A provides instructions for preparing grant applications to FTA. In the section on the pre-application stage, we propose revising the “Environmental Determination” paragraph, and we propose adding a new section explaining the documentation requirements for the use of flexible funds. The section covering the submission of an application is revised and expanded and is no longer specific to the TEAM system. The FTA address included in the ECHO form is updated.

FTA has updated the sample program of projects in appendix B to reflect the 10 percent limit on rural area formula funding spent on planning. Appendix C, addressing Section 5311 budget information, is updated to include coding information for job access and reverse commute and planning grants, as well as the Public Transportation on Indian Reservations Program and Appalachian Development Public Transportation Assistance Program.

FTA has updated Appendix D, explaining flexible-funding requirements, to reflect changes to the program in MAP-21. Appendix F provides information on the Section 5311(f) in-kind match for intercity bus. Appendix G contains information on how to calculate the capital cost of contracting. FTA seeks comment on the content of the appendices.

Peter Rogoff
Administrator

[FR Doc. 2013-23435 Filed 09/25/2013 at 8:45 am; Publication Date: 09/26/2013]